N THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Nathu Lal & Others Vs. State of Rajasthan
(D.B. CRIMINAL APPEAL NO.1121/2002)

D. B. Criminal Appeal under Sec.374 (2) Cr.P.C. against the judgment dated 16-8-2002 in Sessions Case No.77/2001 (3/99) passed by Shri G.L.Meena, RHJS, Additional Sessions Judge (Fast Track) Jaipur District Jaipur.

Date of Judgment: January 12, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE R.S.CHAUHAN

Mr. Rajat Ranjan, for the appellants.

Mr. M.L.Goyal, Public Prosecutor for the State.

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

Nathu Lal, Hanuman, Smt.Lali Devi and Smt.Prabhati, the appellants herein, along with Mool Chand were placed on trial before the learned Additional Sessions Judge (Fast Track) Jaipur District Jaipur in Sessions Case No.77/2001 (3/99), who vide judgment dated August 16, 2002 convicted and sentenced the appellants as under:-

Nathu Lal:
U/s.302 IPC:

To suffer life imprisonment and fine of Rs.5000/-, in default to further suffer one year imprisonment.

U/s.323/149 IPC:

To suffer simple imprisonment for six months and fine of Rs.200/-, in default to further suffer one month imprisonment.

U/s.147 IPC:

To suffer simple imprisonment one year and fine of Rs.500/-, in default to further suffer three months imprisonment.

U/s.325/149 IPC:

To suffer simple imprisonment for two years and fine of Rs.1000/-, in default to further suffer six months imprisonment.

Hanuman:
U/s.302/149 IPC:

To suffer life imprisonment and fine of Rs.5000/-, in default to further suffer one year imprisonment.

U/s.323/149 IPC:

To suffer simple imprisonment for six months and fine of Rs.200/-, in default to further suffer one month imprisonment.

U/s.147 IPC:

To suffer simple imprisonment one year and fine of Rs.500/-, in default to further suffer three months imprisonment.

U/s.325 IPC:

To suffer simple imprisonment for two years and fine of Rs.1000/-, in default to further suffer six months imprisonment.

Smt. Lali Devi:
U/s.302/149 IPC:

To suffer life imprisonment and fine of Rs.5000/-, in default to further suffer one year imprisonment.

U/s.323 IPC:

To suffer simple imprisonment for six months and fine of Rs.200/-, in default to further suffer one month imprisonment.

U/s.147 IPC:

To suffer simple imprisonment one year and fine of Rs.500/-, in default to further suffer three months imprisonment.

U/s.325/149 IPC:

To suffer simple imprisonment for two years and fine of Rs.1000/-, in default to further suffer six months imprisonment.

Smt. Prabhati Devi:
U/s.302/149 IPC:

To suffer life imprisonment and fine of Rs.5000/-, in default to further suffer one year imprisonment.

U/s.323 IPC:

To suffer simple imprisonment for six months and fine of Rs.200/-, in default to further suffer one month imprisonment.

U/s.147 IPC:

To suffer simple imprisonment one year and fine of Rs.500/-, in default to further suffer three months imprisonment.

U/s.325/149 IPC:

To suffer simple imprisonment for two years and fine of Rs.1000/-, in default to further suffer six months imprisonment.

Sentences were ordered to run concurrently.

During the course of trial Mool Chand died and the proceeding against him stood dropped.

2. It is the prosecution case that informant Lallu Ram (Pw.1) lodged a report with the police station Kanota on July 2, 1998 stating therein that on the said day in the morning around 4 AM Nathu, Hanuman, Lali Devi, Manju, Moolchand Kumhar and Prabhati came armed with lathis and Nathu inflicted lathi blow on the head of Kalu due to which he became

unconscious. Hanuman caused injury to Sugaram, Mool Chand, Prabhati and Lali caused injuries to Mangal, Rampyari and Habu. Kalu Ram was removed to SMS hospital Jaipur where he died. On that report formal FIR No.84/1998 was registered and investigation commenced. After completion of investigation charge sheet was filed and in due course the case came up for trial before the learned Additional Sessions Judge (Fast Track) Jaipur District Jaipur. Charges under sections 148, 323/149, 325/149, 302 and 302/149 IPC were framed against the appellants, who denied the charges and claimed trial. The prosecution in support of its case examined as may as 16 witnesses. In the explanation under Sec.313 Cr.P.C., the appellants claimed innocence. Two witnesses in defence were examined and documents were exhibited. On hearing final submissions learned trial Judge convicted and sentenced the appellants as indicated herein above.

3. We have heard the rival submissions and scanned the material on record.

4. Death of Kalu Ram was concededly homicidal in nature. As per Post Mortem report (Ex.P-18) following ante mortem injuries were found on the dead body:-

1. Laceration 1½ x ½ x ½ on L. frontal
2. Laceration 1 x ½ x ¼ on R. frontal
3. Laceration 1 x ½ x ¼ on hemoral lobes with contusion over eyebrow (both) and both parietal with reddish hematoma & clotted blood.

As per the Autopsy Surgeon the cause of death was coma as a result of injury to skull and brain.

5. Other members of complainant party also sustained injuries. Injury report (Ex.P-5) of Sugaram reads as under:-

> 1. Bruise oblique term ¼ cm gap of ½ cm between & 4cm x 2 cm adjacent meeting alone left supra scapular region oblique upto mid line back reddish.
> 2. Bruise 4 x ¾cm oblique Rt. latral supra scapular region reddish
> 3. Bruise 1cm x ½cm & ¾ x ¾ Lat. part Rt. shoulder post top area
> 4. Abrasion 1½ x 1cm & 1 x ½ cm Rt. Infra scapular reddish.

Smt.Ram Pyari (Pw.5) vide injury report (Ex.P-19) received following injuries:-

> 1. Abrasion 1 x 1cm left side forearm L/3 part with bruise & swelling tenderness
> 2. Bruise bluish Rt. side forehead simple
> 3. Tenderness Rt. shoulder simple

Mangal (Pw.7) vide injury report (Ex.P-20) received injuries thus:-

> 1. Swelling & abrasion on 2 x 1cm tenderness reddish left forearm U/3 abrasion reddish 4 x ½cm m/3 post medially
> 2. Abrasion reddish clotted blood 4 x 1cm & 1 x 1 cm post medially left forearm
> 3. Abrasions 3 x 1 cm Rt. forearm post L/3 reddish dark ½ cm Rt. forearm medially m/3 & 1cm long L/3 medially
> 4. Bruise meeting at both ends size 6cm x 3cm gap between 1 cm reddish with tenderness oblique Rt. side back lower costal area with swelling ends.

Injuries received by Habu Ram (Pw.4) vide Injury report (Ex.P-21) are as under:-

1. Swelling & tenderness with bruise 3 x 1cm m/3 left forearm upto wrist post medially with abrasion 3 x ¼ cm reddish
2. Abrasion with peeling skin left hand m/3
Index finger St.IP joint dorsally with swelling tenderness
3. Laceration 1cm x ¼ Rt. hand little finger with swelling tenderness
4. Abrasion 5cm x ¼ cm oblique reddish left arm lat.m/3
5. Bruise 6 x 2cm transversly on Rt. supra scapular region reddish tenderness
6. Abrasion ½ x ½ cm medially left side nose fridge reddish simple
7. Tenderness chest mid part

Vide X-ray report (Ex.P-6) he received fracture of lower shaft of ulna bone.

6. In the course of incident the accused party also sustained injuries. Accused Nathu vide injury report (Ex.D10) received following injuries:-

1. swelling diffuse at left dorsal hand
2. Swelling diffuse Rt.hand
3. Laceration 2 x 2cm Forehead.
4. Bruise 2 x 2cm on Lt.elbow joint
5. C/o pain on left knee joint.

Vide X-ray report (Ex.D-16) fracture of 5th metacorpal bone was found.

Accused Hanuman, Smt.Lali, Mool Chand, Smt. Prabhati and Smt.Lali Devi also received injuries and their injury reports Ex.D-11, Ex.D-12, Ex.D-13, Ex.D-14 and Ex.D-15 were placed on record at the trial.

7. It is contended by learned counsel for the appellants that the members of accused and complainant party were neighbours and the quarrel started all of sudden. Since both sides sustained injuries and cross case was registered against the complainant party, it could not be said that they

unlawfully shared common object. Therefore charge for the offence under section 302 read with 149 IPC is not established. Per contra, learned learned Public Prosecutor supported the impugned judgment.

8. A close look at the material on record demonstrates that appellant Nathu also submitted a written report (Ex.D-7A) at police station Kanota with the averments that on July 2, 1998 in the morning Habu Ram, Kalu Ram, Mangal and Sukharam gave beating to him, his father, sister and wife. On that report a cross FIR was registered under section 147, 148 and 323 IPC. The facts stated in the FIR were corroborated by medical injury reports. It is not doubt true that Habu Ram (Pw.4), Ram Pyari (Pw.5), Suga Ram (Pw.6), Mangal (Pw.7) and Lallu Ram (Pw.1) have testified against the appellants but it appears that the incident occurred all of a sudden without any premeditation. The testimony of the witnesses is consistent qua the appellant Nathu Lal alone. So far as other accused are concerned the prosecution could only establish that they were present at the time of incident but it could not be proved beyond the reasonable doubt that they were the members of unlawful assembly and they assembled at the place of incident with a common object. The members of the accused and complainant party were neighbours and incident occurred all of a sudden on a spur of moment in which members of both parties sustained injuries. It could not be established beyond doubt as to who inflicted injury at whom. The evidence is only consistent against accused Nathu Lal that he inflicted single blow with babool stick on the head of Kalu and did not repeat the same. Since Nathu Lal did not behave in cruel or unusual manner, it can only be presumed that Nathu had knowledge that the blow inflicted by him was likely to cause death of Kalu Ram, even though he had no intention of

causing death or such bodily injury as is likely to cause death. Therefore the appellant Nathu Lal is found guilty of the offence punishable under Part II of Section 304 IPC. We in the facts and circumstances of the case grant benefit of doubt to Hanuman, Smt. Lali Devi and Smt. Prabhati looking to the fact that there was no unlawful assembly and free fight took place.

9. For these reasons, we dispose of instant appeal in the following terms:-

(i) We allow the appeal of appellants Hanuman, Smt.Lali Devi and Smt.Prabhati and acquit them of the charges framed against them under sections 302/149, 147, 323, 323/149, 325 and 325/149 IPC. They are on bail, they need not surrender and their bail bonds stand discharged.

(ii) We partly allow the appeal of appellant Nathu Lal and instead of section 302 we convict him under section 304 Part II IPC. Looking to the fact that Nathu Lal has already undergone confinement for a period of more than six years and six months, the ends of justice would be met in sentencing him to the period already undergone by him in confinement. The appellant Nathu Lal, who is in jail, shall be set at liberty forthwith, if not required to be detained, in any other case. We however acquit him of the charges under sections 323/149, 147 and 325/149 IPC.

(iii) The impugned judgment of learned trial court stands modified as indicated above.

(R.S.Chauhan),J. (Shiv Kumar Sharma)J.

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